

Nebraska Ethics Advisory Opinion for Lawyers
No. 82-1

A CORPORATION WHICH FORECLOSES MORTGAGES AND EXERCISES POWERS OF SALE ON BEHALF OF OTHERS IS PRACTICING LAW; AND A LAWYER MAY NOT ACCEPT EMPLOYMENT BY THE CORPORATION TO DO THIS WORK.

FACTS

A lawyer is employed by a corporation engaged in the sale of title insurance and related services. The corporation proposes to contract with lenders to conduct mortgage foreclosures and exercise powers of sale under deeds of trust. The conduct of the foreclosure proceedings would be done under the lawyer's supervision and in his name. The fee for the services performed would be paid to the corporation. The lawyer receives a salary from the corporation.

DISCUSSION

DR 3-101 (A) provides that a lawyer shall not aid a non-lawyer in the unauthorized practice of law.

The determination of what constitutes the unauthorized practice of law is a matter of state law. The most pertinent decision by our Supreme Court is the case of *State ex rel. Hunter v. Daugherty*, 136 Neb. 490, 286 N.W. 783 (1939). In that case, the Supreme Court held that persons who furnished guidance, counsel and advice as to the steps to be taken in a tax foreclosure suit were engaged in the practice of law.

Cases from other jurisdictions are also instructive. In the case of *Wayne v. Murphey-Favre & Co.*, 56 Idaho 788, 59 P.2d 721 (1936), the Supreme Court of Idaho held that a corporation which contracted to advise and assist a county in connection with the issuance of bonds by the county was engaged in the unauthorized practice of law, where the corporation agreed to obtain the

services of attorneys who would render an opinion on the legality of the bonds. In the case of *Steer v. Land Title Guarantee & Trust Co.*, 113 N.E.2d 763 (Ohio C.P. 1953), the court held that a corporation which undertook to have its salaried lawyers prepare legal opinions to be furnished to persons outside of the corporation was engaged in the unauthorized practice of law.

The Committee on Professional Ethics of the American Bar Association has rendered opinions in a number of analogous situations.

In formal opinion No. 31, issued March 2, 1921, the ABA Committee ruled that a corporation which prepares articles of incorporation, by-laws and the necessary papers for the exchange of corporate stock for property or services is engaged in the practice of law. The committee further ruled that an attorney could not ethically be employed by the corporation to do this kind of work.

In informal opinion No. 1264, issued February 16, 1973, the ABA Committee ruled that it would be unethical for a lawyer to work for a corporation which engaged in the business of doing legal research for other lawyers. The committee stated that the corporation would be engaged in the unauthorized practice of law and that participation by a lawyer in such practice is forbidden by DR 3-101(A).

In opinion No. 78-10, this committee advised the inquiring lawyer that it would not be ethical for him to become a shareholder, director or officer of a corporation organized to do research and furnish consultant services in the fields of law and education. This committee concluded that the corporation would be engaged in the unauthorized practice of law and that the attorney would be aiding the corporation in the unauthorized practice of law.

CONCLUSION

It is the opinion of this committee that a corporation

which undertakes to foreclose mortgages and exercise powers of sale on behalf of others is clearly engaged in the unauthorized practice of law. It is the further opinion of this committee that a lawyer who works for the corporation and performs the services required to carry out the foreclosure of the mortgages and the exercise of the powers of sale is assisting a non-lawyer in the unauthorized practice of law, in violation of DR 3-101(A).

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